

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARISA BAVAND,

Plaintiff,

V.

ONEWEST BANK FSB, et al.,

Defendants.

CASE NO. C12-0254JLR

ORDER DENYING PLAINTIFF'S MOTION TO REMAND

I. INTRODUCTION

This matter comes before the court on Plaintiff Marisa Bavand's motion to remand. (Mot. (Dkt. #12).) Having considered the submissions of the parties, the balance of the record, and the governing law, and no party having requested oral argument, the court DENIES Ms. Bavand's motion (Dkt. # 12).

II. BACKGROUND

21 On August 10, 2007, Ms. Bavand allegedly executed a Deed of Trust and a
22 Promissory Note pertaining to real property in Lynwood, Washington (“the Property”).

1 (Compl. (Dkt. # 1-1) ¶ 3.1 & Ex. A (“Deed of Trust”).) The Deed of Trust named
2 Chicago Title Insurance Company (“Chicago Title”) as the trustee, Indymac Bank, F.S.B.
3 (“Indymac”) as the lender, and Defendant Mortgage Electronic Registration Systems, Inc.
4 (“MERS”) as the beneficiary. (Deed of Trust at 15.) The Deed of Trust was recorded in
5 Snohomish County on August 15, 2007 and was re-recorded on March 24, 2011 by
6 Chicago Title. (Deed of Trust at 15; Compl. Ex. B (“Re-Recorded Deed of Trust”) at
7 38.)

8 On May 18, 2011 Defendant Northwest Trustee Services, Inc. (“NWTS”), acting
9 as Defendant OneWest Bank FSB’s (“OneWest”) authorized agent, sent Ms. Bavand a
10 Notice of Default. (*Id.* Ex. E (“Not. of Default”) at 72–76.) The Notice of Default
11 identified OneWest as the owner of the Promissory Note and the loan servicer. (*Id.* at
12 75.) On June 7, 2011, David Rodriguez, an Assistant Secretary for MERS, assigned the
13 Deed of the Trust to OneWest. (*Id.* Ex. I (“Assignment”) at 89.) Ms. Bavand, however,
14 contends that Mr. Rodriguez was not a “legitimate corporate officer of MERS.” (*Id.*
15 ¶ 3.15.) On July 27, 2011, OneWest appointed NWTS as successor trustee to the Deed of
16 Trust. (*Id.* Ex. J (“Appointment”) at 91.) On September 9, 2011, NWTS executed a
17 Notice of Trustee Sale of the Property. (*Id.* Ex. K (“Not. of Trustee’s Sale”) at 96.) The
18 Notice of Trustee Sale stated that the sale would take place on December 16, 2011.¹ (*Id.*
19 at 93.)

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21 ¹ On December 29, 2011, Ms. Bavand obtained a Temporary Restraining Order
22 restraining the trustee’s sale. (Snohomish County TRO Order (Dkt. # 12-4) at 4.)

1 On December 22, 2011, Ms. Bavand filed her complaint in the Snohomish County
2 Superior Court. (Mot. at 2.) Ms. Bavand alleges that neither MERS nor OneWest can
3 properly foreclose on the Property because neither was the proper owner of the
4 Promissory Note at the time the Notice of Default was issued. (See Compl. ¶¶ 3.5, 3.6,
5 3.18.) Through her complaint, Ms. Bavand seeks declaratory judgment under
6 Washington law, including the Washington Deed of Trust Act, RCW ch. 61.24, and
7 brings claims of wrongful foreclosure, violation of the Washington Consumer Protection
8 Act (“WCPA”), RCW ch. 19.86, violation of the Fair Debt Collection Practices Act
9 (“FDCPA”), 15 U.S.C. §§ 1692–1692p, and quiet title. (Compl. parts IV–VIII.) In her
10 motion, Ms. Bavand states that on December 20, 2011 and December 28, 2011, NWTS
11 was served with the summons and complaint. (12/20/11 Decl. of Service (Dkt. #12-1) at
12 2–3; 3/12/12 Aff. of Service (Dkt. #12-2) at 2–3.) On February 1, 2012, OneWest was
13 served and MERS was served on February 3, 2012. (2/7/12 Aff. of Service (Dkt. # 12-5)
14 2–3; 2/16/12 Aff. of Service (Dkt. # 12-6) at 2.)

15 On February 14, 2012, OneWest and MERS filed a notice of removal in this
16 matter asserting that the court has both diversity and federal question jurisdiction. (Not.
17 of Removal (Dkt. # 1) at 2.) On March 19, 2012, Ms. Bavand filed the instant motion to
18 remand. (See generally Mot.)

19 **III. ANALYSIS**

20 Ms. Bavand argues that this matter should be remanded to Snohomish County
21 Superior Court because this court lacks subject matter jurisdiction and because
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1 Defendants' removal was untimely. (*See generally* Mot.) For the reasons stated below,
2 the court determines that remand is not appropriate and DENIES Ms. Bavand's motion.

3 **A. Subject Matter Jurisdiction**

4 "A civil case commenced in state court may, as a general matter, be removed by
5 the defendant to federal district court, if the case could have been brought there
6 originally." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 134 (2005) (citing 28
7 U.S.C. § 1441). "If it appears that the federal court lacks jurisdiction, however, 'the case
8 shall be remanded.'" *Id.* (quoting 28 U.S.C. § 1447(c)). "The burden of establishing
9 federal jurisdiction is on the party seeking removal, and the removal statute is strictly
10 construed against removal jurisdiction." *Prize Frize, Inc. v. Matrix, Inc.*, 167 F.3d 1261,
11 1265 (9th Cir. 1999). Any doubts about removability are resolved in favor of remanding
12 the case to state court. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108–09
13 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

14 One instance in which the district courts of the United States have original
15 jurisdiction is where the action "aris[es] under the Constitution, laws, or treaties of the
16 United States." 28 U.S.C. § 1331. Whether a claim "arises under" federal law for
17 removal purposes is determined by the "well-pleaded complaint" rule. *Rivet v. Regions
18 Bank of La.*, 522 U.S. 470, 475 (1998). Under this rule, "federal jurisdiction exists only
19 when a federal question is presented on the face of the plaintiff's properly pleaded
20 complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). "The rule makes the
21 plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive
22 reliance on state law." *Id.*; *see also Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 344 (9th

1 Cir. 1996) (holding that “a plaintiff may allege a violation of Title VII . . . as part of a
2 state law cause of action without converting his claim into a Title VII action or an action
3 that depends on a substantial federal question” that would give the district court
4 jurisdiction over the action).

5 Additionally, under 28 U.S.C. § 1367(c), a court has supplemental jurisdiction
6 over state law claims that are “so related” to the claims over which the court has original
7 jurisdiction that “they form part of the same case or controversy” under Article III.
8 28 U.S.C. § 1367(a). Claims are part of the same case or controversy if they “share[] a
9 ‘common nucleus of operative fact’” and the claims are such that they would normally be
10 tried together. *Bahrampour v. Lambert*, 356 F.3d 969, 978 (9th Cir. 2004) (quoting *Trs.
11 Of the Constr. Indus. & Laborers Health & Welfare Trust v. Desert Valley Landscape
12 Maint., Inc.*, 333 F.3d 923, 925 (9th Cir. 2003); *see also United Mine Workers of Am. v.
13 Gibbs*, 383 U.S. 715, 725 (1966)). A court may decline to exercise supplemental
14 jurisdiction if:

- 15 (1) the claim raises a novel or complex issue of State law,
- 16 (2) the claim substantially predominates over the claim or claims over
which the district court has original jurisdiction,
- 17 (3) the district court has dismissed all claims over which it has original
jurisdiction, or
- 18 (4) in exceptional circumstances, there are other compelling reasons for
declining jurisdiction.

19 28 U.S.C. § 1367(c). The Ninth Circuit has stated that “[w]hile discretion to decline to
20 exercise supplemental jurisdiction over state law claims is triggered by the presence of
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1 one of the conditions in § 1367(c), it is informed by the *Gibbs* values ‘of economy,
2 convenience, fairness, and comity.’” *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001
3 (9th Cir. 1997).

4 On its face, Ms. Bavand’s complaint presents a federal question. She alleges that
5 OneWest, MERS, NWTS, and other unnamed defendants violated the FDCPA. (Compl.
6 ¶¶ 7.1–7.5.) She does not dispute that she makes this claim under federal law. (Mot. at
7 6–7) (“A single federal claim exists in the complaint alleging violations of the
8 [FDCPA].”) Therefore, the court has jurisdiction over that claim pursuant to 28 U.S.C.
9 § 1331.

10 Additionally, the court has supplemental jurisdiction over Ms. Bavand’s state law
11 claims. All of her claims come from the same set of facts—Defendants’ allegedly
12 wrongful behavior in relation to the management of her loan and foreclosure on her
13 property—and are so related that they would normally be tried together. Thus, because
14 her state law claims are part of the same case or controversy as her FDCPA claim, the
15 court has jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

16 Nevertheless, Ms. Bavand argues that the court should decline to exercise
17 supplemental jurisdiction pursuant to 28 U.S.C. § 1367. (Mot. at 6.) She argues that her
18 state law claims predominate over her federal claim, stating that “[t]he single federal
19 claim itself is more an ancillary, or single element, under the Plaintiff’s claims for
20 violation of the Washington Consumer Protection Act.” (*Id.* at 7–8.) She also argues that
21 her state law claims raise novel questions of state law and that “a thorough review” of
22 Washington case law showed that there were no cases interpreting the provisions of

1 RCW 61.24 upon which Ms. Bavand's claims rely. She further argues that "there is no
2 compelling reason for this Court to accept this case when the majority of the claims are
3 matters of state law." (*Id.* at 8.)

4 The court finds Ms. Bavand's arguments misplaced. As an initial matter, Ms.
5 Bavand misinterprets 28 U.S.C. § 1337, which provides that "[t]he district courts may
6 decline to exercise supplemental jurisdiction over a claim" that is part of the same case or
7 controversy over a claim for which the court has original jurisdiction. 28 U.S.C.
8 § 1337(a), (c). Here, Ms. Bavand seeks to remand her entire complaint, including her
9 federal FDCPA claim, to State Court. But, 28 U.S.C. § 1337 does not permit this court to
10 decline jurisdiction over a claim for which it has original jurisdiction simply because the
11 § 1337(c) factors suggest remand of the related state law claims. *See Baker v. Kingsley*,
12 387 F.3d 649, 656–57 (7th Cir. 2004) (stating that "the authority to remand pursuant to
13 § 1337 extends only to claims that are not within the district court's original jurisdiction"
14 and collecting cases). Therefore, even were the court to accept Ms. Bavand's arguments
15 regarding the predominance and novelty of the state law issues and decline supplemental
16 jurisdiction over the state law claims, Ms. Bavand's FDCPA claim would still remain
17 before this court. This is not the result that Ms. Bavand seeks.

18 Further, the court disagrees with Ms. Bavand's arguments that her state law claims
19 substantially predominate over her federal law claim and that she raises novel issues of
20 state law. With respect to whether the state law claims substantially predominate,
21 although Ms. Bavand is correct that her complaint consists largely of state law claims,
22 that alone does not establish that the state law claims predominate. State law claims can

1 substantially predominate “in terms of proof, of the scope of the issues raised, or of the
2 comprehensiveness of the remedy sought.” *Gibbs*, 383 U.S. at 726. Here, Ms. Bavand
3 asserts that Defendants’ actions violated the FDCPA through false and misleading actions
4 and by threatening to non-judicially dispossess her of the Property when they did not
5 have a right to possession. (Compl. ¶¶ 7.2, 7.3.) Similarly, Ms. Bavand alleges that
6 Defendants wrongfully foreclosed on her property and engaged in false and deceptive
7 conduct in violation of Washington law. (*Id.* ¶¶ 5.10, 6.2.) Thus, resolution of Ms.
8 Bavand’s state and federal claims will both depend on findings and conclusions regarding
9 the nature of Defendants’ actions and rights in relation to the Property. Because Ms.
10 Bavand’s state causes of action require consideration of similar facts and issues as her
11 federal claim, her state law claims cannot be said to substantially predominate over her
12 federal claim. *See Lindsay v. Gov’t Emps. Ins. Co.*, 448 F.3d 416, 425 (D.C. Cir. 2006)
13 (“Predomination under section 1337(c)(2) relates to the type of claim and here the state
14 law claims essentially replicate the FLSA claims—they plainly do not predominate.”);
15 *Picard v. Bay Area Reg’l Transit Dist.*, 823 F. Supp. 1519, 1527 (N.D. Cal. 1993)
16 (concluding that state law claims did not predominate where the same conduct formed the
17 basis of the state and federal claims, the state and federal claims would require “virtually
18 the same evidentiary presentations at trial,” presenting the claims together at trial would
19 not pose a risk of jury confusion, and plaintiffs’ request for damages was based on the
20 state and federal claims).
21 Ms. Bavand contends that a “thorough review of Washington case law reveals no
22 cases interpreting the provisions of RCW 61.24 upon which [she] seeks relief.” (Mot. at

1 8.) This argument lacks merit. Courts in this district have extensively examined the
2 Washington Deed of Trust Act including the provisions on which Ms. Bavand's claims
3 rely. *See, e.g., Thepvongsa v. Reg'l Tr. Servs. Corp.*, No. C10-1045 RSL, 2011 WL
4 307364, at *6 (W.D.Wash. Jan. 26, 2011) (examining requirements of the Washington
5 Deed of Trust Act regarding the trustee's duties); *Moore v. Fed. Nat. Mortg. Ass'n*, No.
6 C11-1342RSL, 2012 WL 424583, at *2 -3 (W.D.Wash. Feb. 9, 2012) (stating that the
7 Washington Deed of Trust Act requires "proof that the beneficiary under the deed of trust
8 is the owner of the related promissory note"). Additionally, Washington courts have set
9 forth the purpose and interpretive principles associated with the Act. *See, e.g., Albice v.*
10 *Premier Mortg. Servs. of Wash., Inc.*, 239 P.3d 1148, 1152 (Wash. Ct. App. 2010) ("We
11 construe the Act to further three objectives: (1) the nonjudicial foreclosure process should
12 remain efficient and inexpensive; (2) the process should provide an adequate opportunity
13 for interested parties to prevent wrongful foreclosure; and (3) the process should promote
14 the stability of land titles.") (citing *Cox v. Helenius*, 693 P.2d 683, 685-86 (Wash. 1985);
15 *Amresco Independence Funding, Inc. v. SPS Props., LLC*, 119 P.3d 884, 886 (Wash. Ct.
16 App. 2005) (stating that because the Washington Deed of Trust statutes "remove many
17 protections borrowers have under a mortgage, lenders must strictly comply with the
18 statutes, and courts must strictly construe the statutes in the borrower's favor") (citing
19 *Koegel v. Prudential Mut. Sav. Bank*, 752 P.2d 385, 387 (Wash. Ct. App. 1988)).
20 Accordingly, this court does not find the requisite novelty with regards to Ms. Bavand's
21 state law claims such that the court should decline to exercise jurisdiction.
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1 In sum, the court concludes that it has federal question jurisdiction over this matter
2 pursuant to 28 U.S.C. § 1331. It concludes that Ms. Bavand's state law claims do not
3 substantially predominate over her federal claim and do not present novel issues of state
4 law. Moreover, if the court were to decline to exercise supplemental jurisdiction, the
5 result would be two concurrent actions arising from the same sets of facts—one in state
6 court addressing the state law claims and one in this court addressing her FDCPA claim.
7 Such a result is contrary to the concerns of efficiency, convenience, and fairness
8 underlying supplemental jurisdiction. Therefore, the court asserts supplemental
9 jurisdiction over the state law claims made in the complaint pursuant to 28 U.S.C. §
10 1337.²

11 **B. Removal Procedure**

12 To remove a case from state to federal court, a defendant must file a notice of
13 removal within 30 days of receiving the initial pleading or of service of the same.
14 28 U.S.C. § 1446(b),³ *see also Destfino v. Reiswig*, 630 F.3d 952, 955 (9th Cir. 2011).
15 When there are multiple defendants, each defendant has thirty days to remove the case to
16 federal court. *Destfino*, 630 F.3d at 955–56 (rejecting “first-served rule” which would

17 ² Ms. Bavand also argues that NWTS is not a nominal party in this matter. (Mot. at 5–6.)
18 Although this argument was in context of the procedural joinder requirement for removal (*see id.*), it also brings into question the court’s diversity jurisdiction. Having determined federal
19 question jurisdiction exists over this matter, the court need not reach the issue of whether NWTS
is a nominal party.

20 ³ 28 U.S.C. §§ 1441 and 1446 were amended on December 7, 2011. Federal Courts
21 Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (2011).
22 These amendments, however, did not take effect until 30 days after December 7, 2011 and do not
apply to this case. *See id.* § 105. The court refers to the applicable statutes at the time this action
was initiated.

1 require removal within 30 days of service of the first defendant and holding that “each
2 defendant is entitled to thirty days to exercise his removal rights after being served”).
3 Additionally, all properly served defendants must join in the petition for removal. *Id.* at
4 956 (citing *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988)).
5 Such joinder can take the form of “one defendant’s timely removal notice containing an
6 averment of the other defendants’ consent and signed by an attorney of record.” *Proctor*
7 *v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1225 (9th Cir. 2009).

8 A motion to remand must be made within 30 days of the notice of removal.

9 28 U.S.C. § 1447(c). If plaintiff does not timely move to remand, plaintiff’s procedural
10 objections are waived and plaintiff may only challenge removal for lack of subject matter
11 jurisdiction. *See* 28 U.S.C. § 1447(c); *see also Libhart v. Santa Monica Dairy Co.*, 592
12 F.2d 1062, 1065 (9th Cir. 1979). Untimely removal and failure to join all defendants are
13 procedural defects in removal. *See Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193
14 n.1 (9th Cir. 1988) (“The failure to join all proper defendants in a removal petition may
15 otherwise render the removal petition procedurally defective.”); *Maniar v. F.D.I.C.*, 979
16 F.2d 782, 785 (“[U]ntimely removal is a procedural rather than a jurisdictional defect.”).

17 Ms. Bavand argues that the notice of removal was untimely because based on the
18 times that NWTS was served, the action should have been removed by January 28, 2012,
19 but was not removed by that date. (Mot. at 5.) She also argues that removal was
20 defective because NWTS did not join in the removal within the 30 days permitted for
21 removal. (*Id.*)

1 Here, Ms. Bavand's motion to remand is untimely. OneWest and MERS filed
2 their notice of removal on February 14, 2012. (*See generally* Not.) Ms. Bavand filed her
3 motion to remand on March 19, 2012—34 days after the notice of removal. (*See*
4 *generally* Mot.) Ms. Bavand, therefore, filed her motion after the statutory deadline and
5 any procedural objections to removal are waived. Ms. Bavand's arguments that this
6 matter should be remanded for untimeliness or for failure to join NWTS fail on those
7 grounds alone.

8 Ms. Bavand's procedural arguments also fail on the merits. First, although NWTS
9 was served in December 2011, OneWest was served on February 1, 2012 and MERS was
10 served on February 4, 2012. (Mot. at 2–3.) Therefore, OneWest and MERS' February
11 14, 2012 notice of removal was within the 30-day statutory time frame for removing the
12 action. *See Destfino*, 630 F.3d at 955–56. Second, NWTS properly joined in the notice
13 of removal. The notice states: “Co-Defendant NWTS has consented to removal of this
14 action through its undersigned counsel.” (Not. at 5.) That notice was signed by the
15 attorney representing OneWest, MERS, and NWTS. (*Id.* at 6.) This meets the
16 requirement that all parties consent to removal.

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IV. CONCLUSION

2 For the foregoing reasons, the court DENIES Ms. Bavand's motion to remand
3 (Dkt. # 12). The court ORDERS the parties to submit a Joint Status Report no later than
4 May 30, 2012.

5 Dated this 22nd day of May, 2012.



Jim R. Blatt

The Honorable James L. Robart
U.S. District Court Judge